

FIRST REGULAR SESSION

HOUSE BILL NO. 458

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SCHARNHORST.

0091L.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 135, RSMo, by adding thereto one new section relating to the Missouri special needs scholarship tax credit program known as Bryce's Law.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 135, RSMo, is amended by adding thereto one new section, to be known as section 135.1220, to read as follows:

135.1220. 1. This section shall be known and may be cited as "Bryce's Law".

2. As used in this section, the following terms mean:

(1) "Autism spectrum disorder", pervasive developmental disorder; Asperger syndrome; childhood disintegrative disorder; Rett syndrome; and autism;

(2) "Contribution", a donation of cash, stock, bonds, or other marketable securities, or real property;

(3) "Department", the department of elementary and secondary education;

(4) "Director", the commissioner of the department of elementary and secondary education;

(5) "Educational scholarships", grants to students to cover all or part of the tuition and fees at either a qualified nonpublic school or a qualified public school, including transportation;

(6) "Eligible student", any elementary or secondary student who attended public school in Missouri the preceding semester, or who will be attending school in Missouri for the first time, who has an individualized education plan based on a special needs condition or who has a medical diagnosis by a qualified health professional of a special needs condition;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 18 (7) "Parent", includes a guardian, custodian, or other person with authority to act
19 on behalf of the child;
- 20 (8) "Program", the program established in this section;
- 21 (9) "Qualified health professional", a person licensed under chapter 334 or 337
22 who possesses credentials as described in rules promulgated jointly by the department of
23 elementary and secondary education and the department of mental health to make a
24 diagnosis of special needs;
- 25 (10) "Qualified school", either an accredited public elementary or secondary school
26 in a district that is accredited without provision outside of the district in which a student
27 resides or an accredited nonpublic elementary or secondary school in Missouri that
28 complies with all of the requirements of the program and complies with all state laws that
29 apply to nonpublic schools regarding criminal background checks for employees and
30 excludes from employment any person not permitted by state law to work in a nonpublic
31 school;
- 32 (11) "Scholarship granting organization", a charitable organization that:
- 33 (a) Is except from federal income tax;
- 34 (b) Complies with the requirements of this program;
- 35 (c) Provides education scholarships to students attending qualified schools of their
36 parents' choice; and
- 37 (d) Does not accept contributions on behalf of any eligible student from any
38 taxpayer with any obligation to provide any support for the eligible student;
- 39 (12) "Special needs", an autism spectrum disorder, Down syndrome, Angelman
40 syndrome, or cerebral palsy;
- 41 (13) "State tax liability", in the case of a business taxpayer, any liability incurred
42 by such taxpayer under chapters 143, 147, 148, and 153, excluding sections 143.191 to
43 143.265 and related provisions, and in the case of an individual taxpayer, any liability
44 incurred by such taxpayer under chapter 143, excluding sections 143.191 to 143.265 and
45 related provisions;
- 46 (14) "Taxpayer", a person, firm, a partner in a firm, corporation, or a shareholder
47 in an S corporation doing business in the state of Missouri and subject to the state income
48 tax imposed by the provisions of chapter 143, or a corporation subject to the annual
49 corporation franchise tax imposed by the provisions of chapter 147, or an insurance
50 company paying an annual tax on its gross premium receipts in this state, or other
51 financial institution paying taxes to the state of Missouri or any political subdivision of this
52 state under the provisions of chapter 148, or an express company which pays an annual tax
53 on its gross receipts in this state under chapter 153, or an individual subject to the state

54 income tax imposed by the provisions of chapter 143, or any charitable organization which
55 is exempt from federal income tax and whose Missouri unrelated business taxable income,
56 if any, would be subject to the state income tax imposed under chapter 143.

57 3. For all tax years beginning on or after January 1, 2013, a taxpayer shall be
58 allowed to claim a tax credit against the taxpayer's state tax liability in an amount equal
59 to eighty percent of the amount such taxpayer contributed to a scholarship granting
60 organization. No taxpayer shall be issued more than eight hundred thousand dollars in tax
61 credits authorized under this section per tax year.

62 4. The amount of the tax credit claimed shall not exceed fifty percent of a
63 taxpayer's state tax liability for the taxable year for which the credit is claimed. However,
64 any tax credit that cannot be claimed in the taxable year the contribution was made may
65 be carried over to the next four succeeding taxable years until the full credit has been
66 claimed.

67 5. The director shall determine, at least annually, which organizations in this state
68 may be classified as scholarship granting organizations. The director may require of an
69 organization seeking to be classified as a scholarship granting organization whatever
70 information which is reasonably necessary to make such a determination. The director
71 shall classify an organization as a scholarship granting organization if such organization
72 meets the definition set forth in this section.

73 6. The director shall establish a procedure by which a taxpayer can determine if
74 an organization has been classified as a scholarship granting organization. Scholarship
75 granting organizations shall be permitted to decline a contribution from a taxpayer.

76 7. Each scholarship granting organization shall provide information to the director
77 concerning the identity of each taxpayer making a contribution to the scholarship granting
78 organization who is claiming a tax credit under this section and the amount of the
79 contribution. The director shall provide the information to the director of revenue. The
80 director shall be subject to the confidentiality and penalty provisions of section 32.057
81 relating to the disclosure of tax information.

82 8. The director shall annually make a determination on the number of students in
83 Missouri with an individualized education program based upon special needs. The
84 director shall use ten percent of this number to determine the number of students to receive
85 scholarships from a scholarship granting organization in that year for students with special
86 needs who have at the time of application an individualized education program, plus a
87 number calculated by the commissioner by applying the state's latest available autism
88 incidence rate to the state's population of children from age five to nineteen who are not
89 enrolled in public schools and taking ten percent of that number for scholarships for

students who do not have current individualized education programs but who have a diagnosis of special needs by a qualified health professional at the time of application. The director shall publicly announce the number of each category of special needs scholarship opportunities available each year. Once a scholarship granting organization has decided to provide a student with a scholarship, it shall promptly notify the director. The director shall keep a running tally of the number of scholarships granted in the order in which they were reported. Once the tally reaches the annual limit of eligible students, the director shall notify all of the participating scholarship granting organizations that they shall not issue any more scholarships and any more receipts for contributions. If the scholarship granting organizations have not expended all of their available scholarship funds in that year at the time when the limit is reached, the available scholarship funds may be carried over into the next year. These unexpended funds shall not be counted as part of the requirement in subdivision (3) of subsection 10 of this section for that year. Any receipt for a scholarship contribution issued by a scholarship granting organization before the director has publicly announced the student limit has been reached shall be valid for a taxpayer claiming a credit.

9. Notwithstanding any other law to the contrary, any tax credits granted under this section may be assigned, transferred, sold, or otherwise conveyed without consent or approval. Such taxpayer, hereinafter the assignor for purposes of this section, may sell, assign, exchange, or otherwise transfer earned tax credits:

(1) For no less than seventy-five percent of the par value of such credits; and

(2) In an amount not to exceed one hundred percent of annual earned credits.

10. Each scholarship granting organization participating in the program shall:

(1) Notify the department of its intent to provide educational scholarships to students attending qualified schools;

(2) Provide a department-approved receipt to taxpayers for contributions made to the organization;

(3) Ensure that at least ninety percent of its revenue from donations is spent on educational scholarships, and that all revenue from interest or investments is spent on educational scholarships;

(4) Distribute periodic scholarship payments as checks made out to a student's parent and mailed to the qualified school where the student is enrolled. The parent or guardian shall endorse the check before it can be deposited;

(5) Cooperate with the department to conduct criminal background checks on all of its employees and board members and exclude from employment or governance any individual who might reasonably pose a risk to the appropriate use of contributed funds;

(6) Ensure that scholarships are portable during the school year and can be used at any qualified school that accepts the eligible student according to a parent's wishes. If a student moves to a new qualified school during a school year, the scholarship amount may be prorated;

(7) Demonstrate its financial accountability by:

(a) Submitting a financial information report for the organization that complies with uniform financial accounting standards established by the department and conducted by a certified public accountant; and

(b) Having the auditor certify that the report is free of material misstatements;

(8) Demonstrate its financial viability, if the organization is to receive donations of fifty thousand dollars or more during the school year, by filing with the department before the start of the school year:

(a) A surety bond payable to the state in an amount equal to the aggregate amount of contributions expected to be received during the school year; or

(b) Financial information that demonstrates the financial viability of the scholarship granting organization.

11. Each scholarship granting organization shall ensure that each participating school that accepts its scholarship students shall:

(1) Comply with all health and safety laws or codes that apply to nonpublic schools;

(2) Hold a valid occupancy permit if required by its municipality;

(3) Certify that it will comply with 42 U.S.C. Section 1981, as amended;

(4) Provide academic accountability to parents of the students in the program by regularly reporting to the parent on the student's progress; and

(5) Certify that in providing any educational services or behavior strategies to a scholarship recipient with a diagnosis of or an individualized education program based upon autism spectrum disorder it will:

(a) Adhere to the best practices recommendations of the Missouri Autism Guidelines Initiative or document why it is varying from the guidelines;

(b) Not use any evidence-based interventions that have been found ineffective by the commission on Medicare as described in the Missouri Autism Guidelines Initiative Guide to Evidence-based Interventions; and

(c) Provide documentation in the student's record of the rationale for the use of any intervention that is categorized as unestablished, insufficient evidence, or level 3 by the Missouri Autism Guidelines Initiative Guide to Evidence-based Interventions.

12. Scholarship granting organizations shall not provide educational scholarships for students to attend any school with paid staff or board members who are relatives within the first degree of consanguinity or affinity.

13. A scholarship granting organization shall publicly report to the department, by June first of each year, the following information prepared by a certified public accountant regarding its grants in the previous calendar year:

(1) The name and address of the scholarship granting organization;

(2) The total number and total dollar amount of contributions received during the previous calendar year; and

(3) The total number and total dollar amount of educational scholarships awarded during the previous calendar year, including the category of each scholarship, and the total number and total dollar amount of educational scholarships awarded during the previous year to students eligible for free and reduced lunch.

14. The department shall adopt rules and regulations consistent with this section as necessary to implement the program.

15. The department shall provide a standardized format for a receipt to be issued by a scholarship granting organization to a taxpayer to indicate the value of a contribution received. The department shall require a taxpayer to provide a copy of this receipt when claiming the Missouri special needs scholarship tax credit.

16. The department shall provide a standardized format for scholarship granting organizations to report the information in this section.

17. The department may conduct either a financial review or audit of a scholarship granting organization.

18. If the department believes that a scholarship granting organization has intentionally and substantially failed to comply with the requirements of this section, the department may hold a hearing before the director or the director's designee to bar a scholarship granting organization from participating in the program. The director or the director's designee shall issue a decision within thirty days. A scholarship granting organization may appeal the director's decision to the administrative hearing commission for a hearing in accordance with the provisions of chapter 621.

19. If the scholarship granting organization is barred from participating in the program, the department shall notify affected scholarship students and their parents of this decision within fifteen days.

20. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable,

section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2013, shall be invalid and void.

21. The department shall conduct a study of the program with funds other than state funds. The department may contract with one or more qualified researchers who have previous experience evaluating similar programs. The department may accept grants to assist in funding this study.

22. The study shall assess:

- (1) The level of participating students' satisfaction with the program;
- (2) The level of parental satisfaction with the program;
- (3) The percentage of participating students who were bullied or harassed because of their special needs status at their resident school district compared to the percentage so bullied or harassed at their qualified school;
- (4) The percentage of participating students who exhibited behavioral problems at their resident school district compared to the percentage exhibiting behavioral problems at their qualified school;

(5) The class size experienced by participating students at their resident school district and at their qualified school; and

(6) The fiscal impact to the state and resident school districts of the program.

23. The study shall be completed using appropriate analytical and behavioral sciences methodologies to ensure public confidence in the study.

24. The department shall provide the general assembly with a final copy of the evaluation of the program by December 31, 2016.

25. The public and nonpublic participating schools from which students transfer to participate in the program shall cooperate with the research effort by providing student assessment instrument scores and any other data necessary to complete this study.

26. The general assembly may require periodic updates on the status of the study from the department. The individuals completing the study shall make their data and methodology available for public review while complying with the requirements of the Family Educational Rights and Privacy Act, as amended.

27. Under section 23.253 of the Missouri sunset act:

- (1) The provisions of the new program authorized under this section shall sunset automatically on December 31, 2019, unless reauthorized by an act of the general assembly; and

232 **(2) If such program is reauthorized, the program authorized under this section**
233 **shall sunset automatically on December 31, 2031; and**

234 **(3) This section shall terminate on December thirty-first of the calendar year**
235 **immediately following the calendar year in which the program authorized under this**
236 **section is sunset. The termination of the program as described in this subsection shall not**
237 **be construed to preclude any taxpayer who claims any benefit under any program that is**
238 **sunset under this subsection from claiming such benefit for all allowable activities related**
239 **to such claim that were completed before the program was sunset, or to eliminate any**
240 **responsibility of the administering agency to verify the continued eligibility of projects**
241 **receiving tax credits and to enforce other requirements of law that applied before the**
242 **program was sunset.**

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